



Telework in Hungary – Legislative, Jurisdictionary and Labour Market Policy Experiences*

Zoltán BANKÓ**

1. Introductory notes

In Hungary, the telework employment relationship was regulated in 2004,¹ and the 12 years that have passed since then make it possible to evaluate the regulation system, consider the aims of legislation, and examine to what extent they were realised. To achieve this, the study reviews the changes in the Hungarian regulation of telework, the legal background in the European Union, and the evaluation² and experience on telework employment in Hungary. After the regulation came into force, several analytic studies evaluated the rules about telework in Hungary,³ often coming to the conclusion that

* This study was realised in the framework of MTA-PTE Comparative and European Employment Policy and Labour Law Research Group. The research was funded by OTKA grant K112961 “Basic economic and labour law elements of the employer’s power to influence the legal relationship, and the changes of interest and cessation of interest during the fulfilment of the employment relationship”. The author dedicates this scientific publication to the 650th anniversary of the foundation of the University of Pécs.

** Senior research fellow, MTA-PTE Comparative and European Employment Policy and Labour Law Research Group, banko.zoltan@ajk.pte.hu.

¹ See Act 22 of 1992, Section 192/C-193/A. (From July 1 2012, Section 196-197 of Act 1 of 2012 cover the employment relationship of the employee working as a teleworker.)

² Detailed analyses related to telework are often found in monographies on atypical employment relationship, see for example KISS, György (ed.): *Az Európai Unió munkajoga*. (Labour law in the European Union) Budapest, Osiris, 2002. 409–407.; LAKY, Teréz: *Az atipikus foglalkozások*. (Atypical jobs) Budapest, Struktúra Munkaügyi Kiadó, 2001.; BANKÓ, Zoltán: *Az atipikus munkajogviszonyok*. (Atypical employment relationships.) Budapest–Pécs, Dialóg Campus, 2010.; BANKÓ, Zoltán – FERENCZ, Jácint: *Atipikus munkajogviszonyok*. (Atypical employment relationships) Budapest, Wolters Kluwer, 2015.; FERENCZ, Jácint: *Atipikus foglalkoztatási formák*. (Atypical forms of employment) Budapest–Pécs, Dialóg Campus, 2015.

³ BANKÓ, Zoltán: Táv munka. Az információs társadalom munkajogi kérdései. (Telework. Labour law considerations of information society.) *Jogtudományi Közlemény*, 2000/6.; BANKÓ, Zoltán: Táv munka az Európai Unióban és Magyarországon (helyzetkép, támogatás, jogalkotás). (Telework in the European Union and in Hungary. Situation, support, legislation.) In: INOTAI, András (ed.): *EU-tanulmányok. I. kötet*. (Studies on the EU. Vol. I) Budapest, Nemzeti Fejlesztési Hivatal, 2004. 609–631.; BANKÓ, Zoltán: A távmunka szabályozása az Európai Unióban és Magyarországon. (The regulation of telework in the European Union and in Hungary.) *Munkaügyi Szemle*, 2005/2. 25–28.; BREINERNÉ VARGA, Ildikó: A távmunka humánpolitikája. (Human policy of telework.) *Emberi Erőforrás-menedzsment Módszertani Füzetek*, 2004/6.; CSURGÓ, Sándor: Táv munka és munkaügyi kapcsolatok Európában. (Telework and labour law relationships in Europe.) *Munkaügyi Szemle*, 1999/6.; FORGÁCS, Tamás: *A távmunka elmélete és gyakorlati alkalmazásának lehetőségei*. (Theory and possibilities of practical implication of telework.) PhD értekezés. Pécs, 2009.; GÖNDÖR, Éva: Új fejezet a Munka Törvénykönyvében – a távmunka jogi szabályozása. (A new chapter in the Labour Code – legal regulation of telework.) *Munkaügyi Szemle*, 2004/9.; 19.; KENDERES, György: A távmunkavégzés, mint a foglalkoztatás egyik lehetséges alternatívája. (Telework as a possible alternative form of employment.) *Advocat*, 2008/3–4. 6–9.; ZACCARIA, Márton Leó: A nemek közti esélyegyenlőség alapvető sajátosságai a japán munkajogban, különös tekintettel az atipikus foglalkoztatási formákra. (Basic characteristics of gender equality in Japanese labour law, especially in atypical employment forms.) In: P. SZABÓ, Béla – SZEMESI,

this legal institution is not void of problems related to the dynamics of labour law, neither from inconsistencies rendering practical implication difficult.⁴

2. Penetration of telework in Hungary – statistical data on the employees doing telework, and evaluation of the data

There are several rather different sets of statistical data about what percentage of employees work as teleworkers in Hungary. According to the Central Statistical Agency (Központi Statisztikai Hivatal, KSH), as a consequence of the economic crisis, and as an alternative to mass dismissals, flexible employment forms became more widespread, among them telework.⁵ In line with this statement, one employee out of ten has already worked as teleworker.⁶ KSH data show that between 2006 and 2014, the ratio of women working in the framework of telework grew from 7.7% to 10%, and the ratio of men from 6.8% to 9.6%. The percentage of persons working primarily or occasionally as teleworkers was the highest in the central region of Hungary, exceeding 14% in 2014, while in the northern part of the great Hungarian plain this ratio was 4.5%.⁷ In relation to these figures it must certainly be emphasised that with respect to this data set, a teleworker is such an employee who performs his or her work mostly or exclusively from home, or at a location away from their commissioner or from the premises of the commissioner, and they send the result of their work to their employer by use of information technology devices.⁸ Thus the above figures do not show telework performed as part of an employment relationship; all other forms of legal relationships (e.g. service contract, entrepreneurship) are also categorised as such if other elements of the work being done fulfil the above definition of telework.

There are also surveys trying to detect the ratio of employees working as teleworkers; according to these data, as a consequence of the efforts of the governmental and private sector, in Hungary around

Sándor (ed.): *Előadások a 8. debreceni állam- és jogtudományi doktorandusz konferencián 2011. június 3.* (Presentations at the 8th Government and law postgraduate conference in Debrecen, June 3 2011.) Debrecen, Lícium-Art, 2011. 335–343.; ZACCARIA, Márton Leó – SÍPKA, Péter: A távmunkavégzés új szabályozása a magyar jogban. (New regulation of telework in Hungarian law.) In: BÍRÓ, Károly Ágoston – SEBESTYÉN-PÁL, György (ed.): *SzámOkt 2012: XXII. Nemzetközi Számítástechnika és Oktatás Konferencia.* Erdélyi Magyar Műszaki Tudományos Társaság (22nd International IT and Education Conference, Hungarian Technical Scientific Society in Transylvania), 2012. 345–350.; MAKÓ, Csaba – KESZI, Roland – MESTER, Dániel: Munkáltatói vélemények a távmunka bevezetésének előfeltételeiről és gyakorlatáról. Kutatási jelentés. (Employer opinions on the preconditions and practice of the introduction of telework. Research report.) *Társadalomkutatás*, 2004/2–3. 203–243.; FORGÁCS, Tamás: A távmunka elméleti vizsgálata. (Theoretical study of telework.) *Vezetéstudomány*, 2011/11. 49–62.; FORGÁCS, Tamás: A távmunka területfejlesztési aspektusai. (Regional developmental aspects of telework.) *Tér és társadalom*, 2011/2. 106.; HARSÁNYI, Eszter: Alternatív munkavégzési formák – távmunka. (Alternative employment forms – telework.) *Munkaiügyi Szemle*, 2010/4.; ÉKES, Ildikó: A távmunkáról. (On telework.) *Munkaiügyi Szemle*, 2000/11. 9–12.;

⁴ PRUGBERGER, Tamás – KENDERES, György: Az atipikus munkaviszonyok a munkaerő-kölsönzés és a távmunkavégzés tükrében. (Atypical employment relationships in the framework of temporary agency work and telework.) *Miskolci Jogi Szemle*, 2009/2. 55.

⁵ Central Statistical Agency, Hungary, 2014 Budapest, Central Statistical Agency, 33/2015.

⁶ Central Statistical Agency, 35/2015.

⁷ Central Statistical Agency, 35/2015.

⁸ Central Statistical Agency, 35/2015; LAKY, Teréz – BORBÉLY, Szilvia – NACSA, Beáta – FREY, Mária – LAKATOS, Judit – NÁDAS, Magdolna – SIMONYI, Ágnes – LINDNER, Sándor – PLANK, Ferencné – GERE, Ilona: *Az atipikus foglalkoztatási formák Magyarországon.* (Atypical employment forms in Hungary.) Budapest, published by the Integrational Strategic Working Group, 1997.

1–2% of employees work for their companies as teleworkers (full time, part time or occasionally).⁹ These latter data is also supported by comparative studies, showing that in Hungary the ratio of teleworkers is low, even in comparison to other East European countries.¹⁰

This is true even if Hungary became a relatively important receiving country in the past decade for shared services centres, mostly because of its favourable geographical location, the financial and cultural attractiveness of Budapest, skilled and – on a European level – cheap workforce, the low level of corporate tax, and in recent years due to the EU accession.¹¹

3. Telework in the member states of the European Union, and relevant European Union regulation on telework¹²

3.1. The situation of telework in the member states¹³

When outlining the extent of telework, studies contain very different data on the ratio of workers employed as teleworkers. In the lack of unified European statistical data handling and use of concepts, it is difficult to make comparisons, but it is worth reviewing a few pieces of data to give an idea of proportions: In 1999 in Great Britain more than one million people, and¹⁴ in Germany 875.000-1.5 million people were estimated to work as teleworkers,¹⁵ and in France 17% of all employees perform some form of telework.¹⁶

It must be emphasised that in the case of surveys where there is an order of magnitude difference in the percentage of employees working in the framework of telework, as related to the total number of employees, then this does not only mean data relevant from a labour law perspective, but rather work performed by means of IT technology, including independent workers (which is the broadest

⁹ Source: <http://tavmunkas.hu/p12m/htm>; SZABÓ, Katalin – BECSKY, András: Önmegvalósítás vagy digitális magány? A távmunka elterjedésének ösztönzői és akadályai Magyarországon. (Self-realisation or digital solitude? Incentives and obstacles to the spread of telework in Hungary.) *Vezetéstudomány*, 2003/12. 10.

¹⁰ Jelle VISSER – Nuria Ramos MARTIN: *Expert Report on the Implementation of the Social Partner's Framework Agreement on Telework*. Amsterdam, University of Amsterdam, 2008. 46.

¹¹ ECKERT, Bálint: Országhatárokön átívelő „távmunka”. A megosztott szolgáltatóközpontok és az outsourcing. (“Telework” across countries. Shared services centres and outsourcing.) In: RADVÁNYI, Tamás (ed.): *Gyakorlat és Tudomány. Dolgozatok a BGF Pénzügyi és Számviteli Kara tudományos műhelyéből*. (Practice and Science. Dissertations from the scientific workshop of Financial and Accounting Faculty of BGF.) Budapest, BGF Pénzügyi és Számviteli Kar, 2007. 306.

¹² For details on how the concept of telework appeared in the documents of the European Union, see BANKÓ-FERENCZ op. cit., and FERENCZ op. cit.

¹³ Several comparative studies were published on the realisation of the telework framework agreement, see for example Roger BLANPAIN (ed.): *European Framework Agreements and Telework. Law and Practice, A European and Comparative Study*. The Netherlands, Kluwer Law International, 2007.; VISSER-MARTIN op. cit.

¹⁴ Alan NEAL: Atypical workforms and European Labour Law. *RdA*, 1992/2.

¹⁵ Manfred WEISS: *Federal Republic of Germany*. Deventer–Boston, Kluwer, 1997.; Manfred WEISS: The Future of the Individual Employment Contract in Germany. In: Lemmy BETTEN (ed.): *The Employment Contract in Transforming Labour Relations*. The Hague, Kluwer, 1995. 171.

¹⁶ Jean-Emmanuel RAY – Jacques ROYOT: France. In: BLANPAIN (szerk.) op. cit. 157.

definition of telework). The number of employees concerned by the telework framework agreement in Europe was estimated at 4.5 million people already in 2002.¹⁷

In parallel to the spreading of telework in the EU, surveys and studies analysed the situation of teleworkers. Earlier, in the case of home workers, the outcome was that only poorly paid, mostly female workers were thus employed, and concerns were raised that the same would happen with teleworkers. Nevertheless, the fact that telework also includes work activities requiring more skilled workforce, this could provide a certain level of protection.¹⁸ It could be observed that in the case of employers employing several teleworkers, the employees often do not know each other or even do not know about the existence of the others. The first employee claim arose in Germany; this – in the absence of any provision in the Betriebsverfassungsgesetz – aimed at the formation of *works councils* in the case of such workers as well. The relevance of this claim is justifiable because *these employees are the most defenceless, since they perform their work in a rather isolated fashion, they are technologically also solely dependent on their employer, and therefore the social decisions of the employer are of crucial importance for them*. Thus, it is understandable that social partners were more and more interested in the commencement of negotiations about a European level arrangement of telework.¹⁹

3.2. The European Telework Framework Agreement

Looking at the legal documents of the European Union, the contents of the telework framework agreement concluded by ETUC, UNICE/UEAPME, and CEEP on July 16 2002 provide guidelines for telework; this contains provisions for the special characteristics of this form of work. It must be emphasised in relation to this agreement that this is an agreement of the European social partners, the third one after the framework agreements on part time and fixed-term employment. The difference between this agreement and the former two is that those were later formulated as directives, but in this case the regulations come into force on the national level,²⁰ by means of the social partners.²¹

According to the definition of the framework agreement, telework is such a work organisational and/or work form where the person performing the work uses IT devices, and the work that could be performed on the premises of the employer is regularly performed from a distance.²²

¹⁷ BLANPAIN op. cit. 43.; According to the data in the European Foundation for Living and Working Conditions from 2002, there are no comparative data from the period after this.

¹⁸ Brocklehurst, evaluating the impacts of telework, concluded that from a certain point of view the situation of home workers and teleworkers (new-technology homeworkers) is similar, in relation to their status, salaries, and skills. Mike BROCKLEHURST: *Homeworking and the New Technology. The Reality and the Rhetoric*. Bradford, MCB University Press, 1989.

¹⁹ See BLANPAIN op. cit. 31–38.

²⁰ Until June 2006, 23 member states announced the execution of the agreement; the process has not started so far in Bulgaria and Romania, nevertheless, the social partners are examining the possibilities for joining the execution process (BLANPAIN op. cit. 43.).

²¹ See BLANPAIN op. cit. 43.

²² See point 2 of the framework agreement.

The framework agreement mentions the voluntary nature of telework in the first place.²³ Telework can be specified in the employment contract of the employee, but this construction can also be chosen later, on a voluntary basis.

According to this, if telework is not part of the original job description, and the employer offers this form of work, the employee can accept or reject this offer. If the employee states they would like to do telework, the employer can accept or reject this offer. Switching to telework in itself – since it does not change the legal status of the employee – modifies only the way of work. If the employee rejects telework, this in itself cannot form the basis for the employer to dismiss the employee or change the conditions of the employment.²⁴

If telework is not part of the original employment contract, the agreement on telework can be restored. Restoration means that the employee continues to work at the premises of the employer, either at the request of the employer, or the employee. The ways of restoration can be fixed in an individual contract or a collective agreement.²⁵

About the employment conditions of employees doing telework, the framework agreement contains the prohibition of discrimination²⁶ in the first place.

Conforming to data protection provisions and the notification obligation during telework,²⁷ according to the framework agreement, is planned to be the obligation of the employer: the employer is responsible for providing adequate software related measures to protect the data used and processed by the teleworker in relation to their jobs. The employer informs the teleworker about the company regulations on data protection and the legislation in force, and the teleworker is obliged to conform to these.

As part of the employer's notification, the following can be prescribed, based on the framework agreement:

- any restrictions related to the use of information technology tools, for example the internet;
- about sanctions if these restrictions are not observed.

In the case of telework performed from home, the protection of privacy is a rather accentuated question. In relation to this we must observe that in case the employer uses any means of monitoring, this has to be done in accordance with the goals of the 90/270/EC directive about visual surveillance, and it has to be deployed observing the directive.²⁸

²³ See point 3 of the framework agreement.

²⁴ See point 3 of the framework agreement.

²⁵ See point 3 of the framework agreement.

²⁶ See point 4 of the framework agreement.

²⁷ See point 5 of the framework agreement.

²⁸ See point 6 of the framework agreement.

The provision of working equipment, and the bearing of overhead costs during telework is a question of crucial importance for the employees. Based on the framework agreement, as a general rule, we can conclude²⁹ that the employer is obliged to provide, install and maintain the equipment for performing regular telework, except when the employer uses his or her own devices. This issue is detailed in the framework agreement in order to protect the interests of employees: if telework is performed on a regular basis, the employer is obliged to compensate or cover immediate costs of the work, especially those related to data transfer and communication. The employer is also obliged to provide appropriate technical background services for the employee. The teleworker is obliged to properly maintain the equipment provided to him or her, and must not collect or disseminate illegal content from/to the internet using this equipment.

In relation to workplace health and safety, technical working safety provisions implicitly need to be observed by the employee. A closely related dogmatic labour law issue is the indemnification obligations of the employer in relation to the employment relationship of the teleworker (accidents, health damages away from the employer's premises). If legislation insures that the employer is liable, regardless of negligence, this provides protection for the teleworker. A rule related to this issue is that the employer, employee representative, and/or the authorities involved must be granted free access to the place of telework to an extent permissible by national legislation and collective agreements. If the teleworker works from home, the employee must be notified in advance about the intention to access this area, and their consent must be achieved.³⁰

According to the next provision of the framework agreement, the teleworker must be able to decide, whenever possible, how they wish to organise their working time.³¹ An important feature of the most common forms of telework is the independent work schedule, but this principle does not have to be fulfilled in all circumstances.³² The framework agreement itself is worded cautiously in this respect, mentioning the possibility of an independent work schedule "in the framework of the legislation in force, collective agreements, and the company's regulation".

The isolation of teleworkers working away from the workplace is often mentioned as a disadvantage of telework. According to this, the obligation of the employer to take measures against the isolation of the teleworkers from the other workers of the enterprise can be prescribed, for example in such a way that possibilities for the employee to regularly meet co-workers, as well as access to information related to the enterprise need to be provided.³³ Another issue related to this is the applicability of collective

²⁹ See point 7 of the framework agreement.

³⁰ See point 8 of the framework agreement.

³¹ See point 9 of the framework agreement.

³² This is with special respect to the employee protection nature of rules pertaining to work schedule. Naturally, the observation of rules on work schedule (and its supervision) poses several further questions.

³³ See point 9 of the framework agreement.

labour law institutions (trade union, collective agreement, works councils, works agreements, see below).

Teleworkers must be given the same training and professional career possibilities as similar employees have at the premises of the company, and the same evaluation system must be used in relation to their work.³⁴

Telework related collective labour law issues also can have an important role. In this respect, the framework agreement in fact declares the prohibition of discrimination by stating that employees performing telework have the same rights as employees working at the employer's premises. According to this requirement, the same conditions must apply to them in relation to employee involvement, and resorting to employee advocacy services. Teleworkers must also be taken into consideration when calculating the threshold values for employee advocacy institutions, according to European national laws, collective agreements, and relevant practice. The organisation responsible for the representation of the collective rights of the teleworker must be determined at the conclusion of the employment relationship. The employee representatives must be given information on the European and national legislation, collective agreements, and relevant practice at the introduction of the telework system.³⁵

4. Changes in the regulation of telework in Hungary

4.1. On the penetration of telework, and its employment policy role

Surveys give very different figures on the number of teleworkers in Hungary, ³⁶for example the percentage of teleworkers is estimated to be between 0.4 and 2.6% of all employees.³⁷ Already in 2005, empirical studies tried to measure employer/employee attitudes towards telework, with a hypothesis that there is or there would be a change in the near future on behalf of employers, and that this would be perceptible in 2005.³⁸

Telework in Hungary can be characterised by *aiming at employment policy goals and supporting these goals* (sometimes stating exaggerated expectations), with the legislative policy at the beginning of the 2000s often trying to promote the creation of telework jobs with more momentum than Hungarians were prepared to accept.³⁹

³⁴ See point 10 of the framework agreement.

³⁵ See point 11 of the framework agreement.

³⁶ See 3.1 on the problems of statistical data analysis about telework.

³⁷ Based on a research by the Sociological Research Institute of the Hungarian Academy of Science in 2006.

³⁸ ECKERT, Bálint: A távmunkások foglalkoztatásával kapcsolatos feltételek átalakulása a verseny- és közszférában. I. rész (Changing conditions in relation to employing teleworkers in the public and private sphere. Part I.) *Munkaügyi Szemle*, 2006/6. 26.

³⁹ Act 4 of 1991 on the promotion of employment and the care for the unemployed, Section 19/C first provided the possibility to promote telework as a means of employment policy: such forms of employment could be subsidised where work was done at locations away from the premises of the employer, by means of information technology equipment.

An institutional, governmental telework program was first developed in Hungary in 1998, when the government created the Telework Coordination Public Association, the funding owners being the Ministry of Labour and Futuris Hungarian Modernisation Inc.⁴⁰ In February 2003 the issue of telework got a new momentum when the Ministry of Labour funded the Telework Council.⁴¹

The Telework Public Association started to operate at the beginning of 1998, its task being to provide the information technology background for telework by running a national service centre. The first possibilities were aimed at disadvantaged people, and the second grant was for women being at maternal leave or raising their child alone. There was considerable interest on the side of employees, the organisation registered more than 15 thousand potential teleworkers in 1998. Nevertheless, employer interest was scarce. In 1998 the applications of 60 companies wanting to provide work that could be done from home by means of IT equipment were evaluated, and 27 of them received subsidy for creating 197 jobs.⁴² The primary mission of the Telework Council is “to aid the ministry in formulating its strategy, providing background information for its decision making, developing proposals, creating projects, actions and grants, and helping it with the promotion of telework in Hungary”.⁴³

4.2. Regulation of telework in Hungary

From 2004, the Hungarian Labour Code⁴⁴ provides special provisions for employees performing telework.⁴⁵ We can agree with such an evaluation of this regulation that Hungarian rules for telework are adequate, they conform to EU requirements, but they can be realised in very few cases because of the low volume of telework.⁴⁶

There are only a few examples in Europe of such a detailed legislative regulation of the contents of the framework agreement; this happened in national legislations where social partners did not wish to express them by national level agreements but rather thought that they should seek the help of legislators.⁴⁷

In Hungarian labour law, since 2004 the concept of an “employee performing telework” is included, and special rights and obligations of the employer and the employee related to these activities are

⁴⁰ SZABÓ–BECKY op. cit. 9.

⁴¹ Ibid.

⁴² *Short term labour market forecast, 1999*. Budapest, OMMK, 1999. 43.

⁴³ tvmunkatanaacs.bmik.hu

⁴⁴ Section 192/C-193/A of Act 22 of 1992; from July 1 2012, Section 196-197 of Act 1 of 2012.

⁴⁵ This solution where issues concerned by the framework agreement are defined in the labour code is evident in Hungary in recent times; nevertheless, in other member states it is rather exceptional. See for example Weiss, Manfred: Germany. For the specific solutions of the member states, see VISSER–MARTIN op. cit.

⁴⁶ GYULAVÁRI, Tamás: *A szürke állomány. A gazdaságilag függő munkavégzés a munkaviszony és az önfoglalkoztatás határán.* (The grey matter. Economically dependent labour on the border of employment relationship and self-employment.) Budapest, Pázmány Press, 2014. 108.

⁴⁷ Legislative regulation of telework is present only in the Czech Republic, Poland, Hungary, and Portugal. BLANPAIN op. cit. 53. Regulation through collective agreements is much more characteristic.

defined. Nevertheless, the basic question, regardless of codification, is in what legal relationship framework this kind of work can be performed.⁴⁸

The basic problem – not only related to telework – is that if a given work activity can be performed in the framework of several legal relationship, how much freedom the parties can be allowed in the choice between the different contract types. Thus, for activities performed in the framework of telework, a service contract, a works contract, or an employment contract can be concluded alike. Based on German labour law literature, *Tamás Prugberger* was the first in Hungary to analyse the question of distinction between telework and home working legal relationship in 1998, well before the codification of telework.⁴⁹ The basic proposition – according to which whenever the parties can decrease their expenditures by choosing the contract type, then normal and reasonable behaviour of the labour market operators is to orientate towards the cheapest contract type⁵⁰ – is perhaps the most evident in the case of telework.⁵¹

Whether telework is an enterprise or a legal relationship that qualifies as a service contract can be decided based upon the contents of the contract, and the existential status of the person performing the work. Therefore, the contentual criteria must be set for identifying the legal relationship: two conditions must be met simultaneously in order to be able to qualify the teleworker as an independent worker (entrepreneur, commissioned): the place and time of work must be solely based on the decision of the teleworker, and an existential condition is that the person should be an independent entity on the market. On the other hand, telework qualifies as an employment relationship if the work is performed according to the instructions of the party providing the work, and control and supervision is also present in one form or another in the legal relationship. Without further listing the criteria, it can be concluded that the characteristics for distinguishing between employment relationships and other legal relationships aimed at performing work, outlined by legal practice and labour law science, can also be applied to qualify telework legal relationships.

The two contract types of civil law – service contract and works contract – can be used to provide the legal framework for the work. The Civil Code provides rules for these contracts. Based on the works contract, the entrepreneur is obliged to create some form of a result that can be achieved by work, and the commissioner is obliged to receive the service and pay the fees for it. In the case of a service contract, the contractor is obliged to tend for the affair he or she was charged with.

From the perspective of distinction from a service contract, generally the following characteristics of the employment relationship need to be considered: the regular, constant nature of a given type of work, close relationship between the employer and the employee, the dependent situation of the

⁴⁸ See above the statistical data handling problems related to this.

⁴⁹ PRUGBERGER, Tamás: A házi bedolgozás és a távmunka. (Home working and telework.) MSZ, 1998/12.

⁵⁰ GYULAVÁRI op. cit. 110.

⁵¹ See for example BREINERNÉ VARGA, Ildikó: A távmunka humánpolitikája. (Human policy of telework.) *Emberi Erőforrás-menedzsment Módszertani Füzetek*, 2004/6.; MAKÓ-KESZI-MESTER op. cit. 203–243.

employee on the employer, the obligation to observe workplace discipline, the constant allocation of the workforce in a given framework, that is the fact that the employee provides his or her labour for the employer, and the obligation to perform work according to the employer's instructions.⁵²

It must also be added that presently most work activities performed in the framework of telework are such that can be done without any concerns in the framework of any legal relationship.⁵³ Nevertheless, in the case of such activities an employment contract also must be concluded whenever the above characteristics of the employment relationship are fulfilled.

The protection of the party performing "non-independent work" can be assured by labour law legislation, by the provision that if the contents of a legal relationship correspond to an employment relationship then the rules of labour law shall apply.

The new Labour Code defines telework as regular activities performed away from the employer's premises, with the aid of information technology devices, and their result are transmitted electronically.⁵⁴

The Labour Code states the special contents of a work contract aimed at telework: the contract should contain that the parties agree that the employee is employed in the form of telework.⁵⁵

The employer – in addition to the items listed in Section 46 – informs the employee

- a) about the rules of supervision by the employer,
- b) about the rules restricting the use of information technology or electronic devices, and
- c) about the organisational unit the employee belongs to, in relation to his or her work.⁵⁶

The rule about equal treatment of teleworkers is that the employer must provide all the information to employees working in the framework of telework that they provide to other employees.⁵⁷

The employer insures that the employee is allowed to enter the employer's premises and maintain contact with other employees.⁵⁸

As a main rule, the legislator allows to parties to deter, even in stating that the employer's right to give instructions – if the parties do not agree otherwise – applies only to the extent of specifying the tasks assigned to the employee.⁵⁹

Another such dispositive provision is that the work schedule of the employee is flexible if the parties do not agree otherwise.⁶⁰ Nevertheless, it must also be noted that in the case of a flexible schedule,

⁵² GELLÉRT, György (szerk.): *A Polgári Törvénykönyv magyarázata*. (Commentary on the Civil Code) Budapest, KJK, 2007. 1624.

⁵³ These are tasks that these days can still be performed with a great extent of independence and flexible schedule; typical such work is translation and journalism.

⁵⁴ Labour Code Section 196, Paragraph (1).

⁵⁵ Labour Code Section 196, Paragraph (2).

⁵⁶ Labour Code Section 196, Paragraph (3).

⁵⁷ Labour Code Section 196, Paragraph (4).

⁵⁸ Labour Code Section 196, Paragraph (5).

⁵⁹ Labour Code Section 197, Paragraph (1).

⁶⁰ Labour Code Section 197, Paragraph (5).

this is only a possibility for the employee to freely determine his or her work schedule, and not a possibility to not confirm to the binding regulation.⁶¹

The employer can prescribe that the information technology or electronic equipment provided by them can only be used for work related activities by the employee.⁶²

While supervising their work activities, the employer must not get an insight into the employee's data stored on the information technology equipment and not related to the employment relationship.⁶³

In the lack of other agreement, the means of supervision, as well the shortest interval between the notification about supervision at the property serving as the place of work and its actual onset is determined by the employer. The supervision cannot pose undue burden to the employee, and other persons using the property serving as the location of work.⁶⁴

The willingness to perform work in the form of telework in Hungary (the conclusion of employment contracts with such contents) is largely influenced by the common law system and specifically the labour protection rule system. According to the labour safety act, telework – based on the agreement with the employer – can also be performed by means of the employee's own equipment. The employer authorises the employee to use such a device after its prior labour safety examination.⁶⁵

Telework can only be performed at a workplace qualified by the employer as adequate in advance. At the workplace, the employee can only change circumstances relevant from a labour safety perspective with the consent of the employer.⁶⁶

The employer or their representative can enter the property serving as the place for work and stay there for the sake of necessary labour safety procedures – especially installation, risk assessment, supervision, accident inspection.⁶⁷

According to the Labour safety act, the employer informs the employee about workplace work safety consultation and advocacy possibilities, as well as the persons responsible for carrying out such activities, and their contact information. The labour safety representative can enter the property serving as the workplace and to stay there only on consent of the employee.⁶⁸

The supervisory body can only perform an official audit on working days, between 8 a.m. and 8 p.m. The labour safety authority shall notify the employer and the employee at least 3 working days

⁶¹ BERKE, Gyula – KISS, György: *Kommentár a munka törvénykönyvéhez*. (Commentary for the labour code.) Budapest, CompLex, 2012. 497.

⁶² Labour Code Section 197, Paragraph (2).

⁶³ Labour Code Section 197, Paragraph (3).

⁶⁴ Labour Code Section 197, Paragraph (4).

⁶⁵ Labour safety act Section 86/A, Paragraph (2).

⁶⁶ Labour safety act Section 86/A, Paragraph (3).

⁶⁷ Labour safety act Section 86/A, Paragraph (5).

⁶⁸ Labour safety act Section 86/A, Paragraph (6).

prior to the onset of the audit. The employer shall acquire the consent of the employee for entering the property that serves as the working place at least by the time of the beginning of the audit.⁶⁹

Altogether the conclusion can be drawn that Hungarian regulation *provides for adequate labour law issues*; concerns can only be raised in relation to the actual *coming into force* of the provisions. This can also necessitate the reformation of other aspects of telework in the framework of other (civil law) legal relationships, in case this type of employment becomes more widespread in Hungary.⁷⁰

5. Telework in the case-law of the Supreme Court

Although in statistical data different ratios of employees are considered as workers employed in the framework of telework, and these data can seem to show that a relatively large percentage of employees are teleworkers in Hungary, the practical aspect of telework is well characterised by the fact that very few legal disputes are raised in this field; because of the low volume of telework, in very few cases the provisions are applied.⁷¹ Still, one case is worth highlighting from the case-law of the Supreme Court, since the factual situation is interesting not only because of telework but it also touches a current issue of Hungarian labour law, namely the electronic notification of dismissal.⁷² In this case,⁷³ the employee was employed as a teleworker, and the employer notified the applicant about the summary dismissal by the MSN software in such a way that the written and properly signed termination document was scanned and sent to the applicant's MSN account in JPG format. Following this, the person exercising employer rights asked the applicant in a text message to use the MSN software. The employee signed in to the MSN software, and gave written notification to the employer that he received the dismissal sent in JPG format and was able to open and read it. During the following conversation, the applicant accepted the summary dismissal, and only asked the respondent to pay his holidays. Nevertheless, the employee later considered the notified summary dismissal of the employer invalid, since in his opinion an employment relationship related official document cannot be delivered via the internet without an electronic signature.

⁶⁹ Labour safety act Section 86/A, Paragraph (7).

⁷⁰ The problem in this situation becomes the problem of persons "with a legal status similar to employees", if a "semi-independent employee" teleworker population is formed (since these activities can in fact classically fulfil the criteria of independent work), nevertheless, they perform these activities only for one commissioner. (See the section above.)

⁷¹ GYULAVÁRI op. cit. 108.

⁷² For more details on the notification of legal declarations by means of electronic documents in Hungarian labour law, see Zoltán BANKÓ: Electronic Documents in Hungarian Labour Law. In: HOMOKI-NAGY, Mária – HAJDÚ, József (ed.): *Ünnepi kötet Dr. Czucz Ottó egyetemi tanár 70. születésnapjára*. (Anniversary publication for the 70th birthday of university professor Dr. Ottó Czucz.) Szeged, Szegedi Tudományegyetem Állam- és Jogtudományi Kar, 2016. 49–59.; Zoltán BANKÓ – Erika KOVÁCS: Die Lehre der ungarischen Kodifikation – Gesetzgeberische Konzepte, ihre Auswirkungen und neue Probleme. (The lesson from Hungarian codification – legislative concepts, their effects and new problems.) *Europäische Zeitschrift für Arbeitsrecht*, 2016/2. 263–270.; BANKÓ, Zoltán – SZŐKE, Gergely László: *Az információtechnológia hatása a munkavégzésre*. (The impact of information technology on labour.) Pécs, Utilitates Bt., 2015. 55–66.

⁷³ Mfv.I.10.644/2013/9.

The Supreme Court stated that during the court process, it was not disputed that the employer's summary dismissal sent by post and the summary dismissal sent by MSN were identical. Based on this, the court concluded that the employer terminated the employment relationship by summary dismissal. According to the court, the employer's summary dismissal was properly created in written form before being sent by MSN in such a way that the respondent digitised the legal document containing the dismissal by means of scanning it. During the digitisation process, the scanner scanned the information on the paper, and created a digital version, the content of which was identical to that of the original, and the respondent transmitted this in JPG (image) format to the applicant. Therefore, the Supreme Court stated that based on judicial practice – because of its similarity to a telegram and telegraph – the legal declaration sent by MSN in JPG format should also be considered as being notified.

6. Summary

The history of Hungarian regulation of telework can be characterised by considerable initial enthusiasm, grand employment policy plans, detailed codification, and rather inconsiderable results. On the grounds that telework is primarily a means of organising labour,⁷⁴ the application of which results in the atypical nature of the employment relationship, labour law legislation can aim at the regulation of these characteristics. This in itself is not suitable for achieving employment policy goals. Therefore, it is worth to state two circumstances about the future and basic questions of telework. On the one hand that a large percentage of work in front of a computer can be performed as telework, and adequate (encouraging) legislation can considerably raise the number of employees performing telework. This, based on Hungarian experiences, also means that the employment policy goals can be achieved; nevertheless, this is only true if the intention to encourage this is also backed up by an encouraging legislative framework. The other statement is that the questions arising in the course of regulating telework cast light on the limitations of labour law,⁷⁵ and the questions to be solved⁷⁶ about independent and non-independent labour.

⁷⁴ FORGÁCS, Tamás: Táv munka – korunk új munkaszervezési modellje? (Telework – the new labour organisation model of our era?) *Marketing & menedzsment*, 2008/5–6. 35.

⁷⁵ Hungarian labour law literature uniformly states that attempts were made at regulation but this legislative question is far from being solved. GYULAVÁRI op. cit. 67.; see also KISS, György: A munkavállalóhoz hasonló jogállású személy problematikája az Európai Unióban és e jogállás szabályozásának hiánya a Munka Törvénykönyvében. (The problem of persons with a legal status similar to employees in the European Union, and the lack of regulation of this legal status in the Labour Code.) *Jogtudományi Közlöny*, 2013/1.

⁷⁶ We do not exaggerate by concluding that a population of economically dependent teleworkers can be one of the target groups of the creation of a third labourer category in the future. GYULAVÁRI op. cit. 108.